

PRA UPDATE AND POLICY

DECORUM ORDINANCE UPDATE

Claudia Quintana, City Attorney

Anne Cardwell, Assistant City Manager

Dawn Abrahamson, City Clerk

Naveed Ashraf, Chief Innovation Officer

Kelly Trujillo, Assistant City attorney

What is a Public Record

Defined: “Any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency, regardless of physical form or characteristic.”

- 1) A writing
- 2) With content relating to the conduct of people’s business
- 3) Prepared by OR
- 4) Owned, used, or retained by any state or local agency



Responding to PRA Requests

- Staff receive PRA requests via a number of sources:
 - Online via NextRequest
 - Email
 - Phone
 - In-Person (public meetings, front counters, etc.)
- Each department has a PRA Coordinator who logs the request into NextRequest
- The PRA Coordinator is tasked with searching for any responsive records
 - Requesting an email search by IT, which involves entering appropriate search terms and conducting a thorough search of all city email
 - Reaching out to any staff, elected or appointed officials for any responsive records
- The PRA Coordinator is also responsible for communicating with and providing the response to the requestor

PRA Requests

Depending on the request, this can be a time consuming process and often involves participation by numerous staff from several departments.

< Request #19-121 >

☒ CLOSED

20 of 134 filtered by: [Requester: Open Vallejo](#)

IMMEDIATE DISCLOSURE REQUEST

March 10, 2019

To Whom It May Concern:

☀️ It's Sunshine Week! ☀️

Pursuant to the California Public Records Act (Government Code Section 6250 et seq.) ("CPRA"), the Vallejo Sunshine Ordinance, and all other applicable laws, please disclose the following records.

- Any opinion or communication in writing to or from a city agency or city officer or employee regarding the Ralph M. Brown Act, the Political Reform Act of 1974, Govt. Code, Sections 81000, et seq. , the California Public Records Act, or the Vallejo Sunshine Ordinance.

This is an immediate disclosure request.

PRA Requests

- Given the significant increase in volume in PRA requests – quadrupled from last year - the City has focused on identifying best practices for effectively managing the volume of requests with our limited public resources.
- Some of the strategies the City utilizes include:
 - Working with the requestor to narrow the request, if possible
 - Working with the requestor to extend the deadline for providing the information
 - Hiring temporary staff to assist with the increased work load
 - Retaining the services of BB&K, an outside law firm that assists with responding to more complex requests from Open Vallejo and Dan Rubins
- While these strategies have proven helpful, City staff is still spending significant time and public resources daily to respond to these requests

Impacts on Staff Time & City Resources

- At least one staff member in each department spends a portion of their time serving as a PRA coordinator and is responsible for handling all requests for the department
- For the Police Department, this is a large volume of work (223 PD requests for 2019 out of the total of 692 to date)
 - Recent legislation – SB 1421 – makes records related to certain types of incidents subject to public records requests (61 such requests)
 - One person in the PD is dedicated to PRAs and uses roughly 95% of their time for that function
 - Three additional PD personnel assist with review, redactions and determinations – spending 40-50% of their time on such tasks
 - PD has released over 4,000 pages of records under SB1421

Impacts on Staff Time & City Resources

- From an IT perspective, over 1 TB (Tera Bytes) of data is currently being consumed on the City servers from PRAs
 - Some examples of the equivalent of 1 TB = 200,000 5-minute songs; 310,000 pictures; or 500 hours worth of movies
 - IT staff spends at least 10 hours per week running searches, uploading data, reviewing emails, and making notes in Next Request
- The City Attorney's Office estimates spending an average of 10-20 hours per week reviewing and assisting departments with PRAs. Additional time is spent on those requests directed at the City Attorney's Office.



Examples...

Search

🔍 Search 1221 requests and counting.

June 17, 2019

To Whom It May Concern:

Pursuant to the California Public Records Act, I hereby request the following records:

- Calendar entries, including the names of participants, start and end time, subject, as well as the body or agenda and attachments of any calendar invites since January 1, 2019 for Claudia Quintana, Randy Risner, Kelly Trujillo, Shannon Eckmeyer, Katelyn Knight, Timothy Smyth, and Dylan Brady, as well as any other lawyers (employees or contractors) in the City Attorney's office.
- Expense reports submitted in 2019 by the individuals above.
- Telephone records for 2019 for the individuals above.



Examples...

To Whom It May Concern:

Pursuant to the California Public Records Act, I hereby request the following records:

For all city elected officials, attorneys working in the Office of the City Attorney, and supervisory officers in the Vallejo Police Department:

1. Employment contracts (see *International Federation of Professional and Technical Engineers v. Superior Court*, 42 Cal.4th 319, 64 Cal. Rptr. 3d 693, 165 P.3d 488 (2007); see also Cal. Gov't Code § 6254.8)
2. Current and historical salary information (see *Int'l Federation*, 42 Cal.4th at 329)
3. Public pension amounts (see *Sacramento County Employees' Retirement System v. Superior Court*, 195 Cal. App. 4th 440, 468; 125 Cal. Rptr. 3d 655 (2011))
4. Personnel records, with a minimum but appropriate amount of redactions necessary to protect sensitive information like home address or telephone number (see *Braun v. City of Taft*, 154 Cal. App. 3d 332, 343-34, 201 Cal. Rptr. 654 (1984))
5. Resumes and job applications (see *Eskaton Monterey Hospital v. Myers*, 134 Cal. App. 3d 788, 794, 184 Cal. Rptr. 840 (1982))
6. Disciplinary records (see *Bakersfield City School Dist. v. Superior Court*, 118 Cal. App. 4th 1041, 1046, 13 Cal. Rptr. 3d 517 (2004))

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 calendar days, as the statute requires.

Sincerely,

Examples....

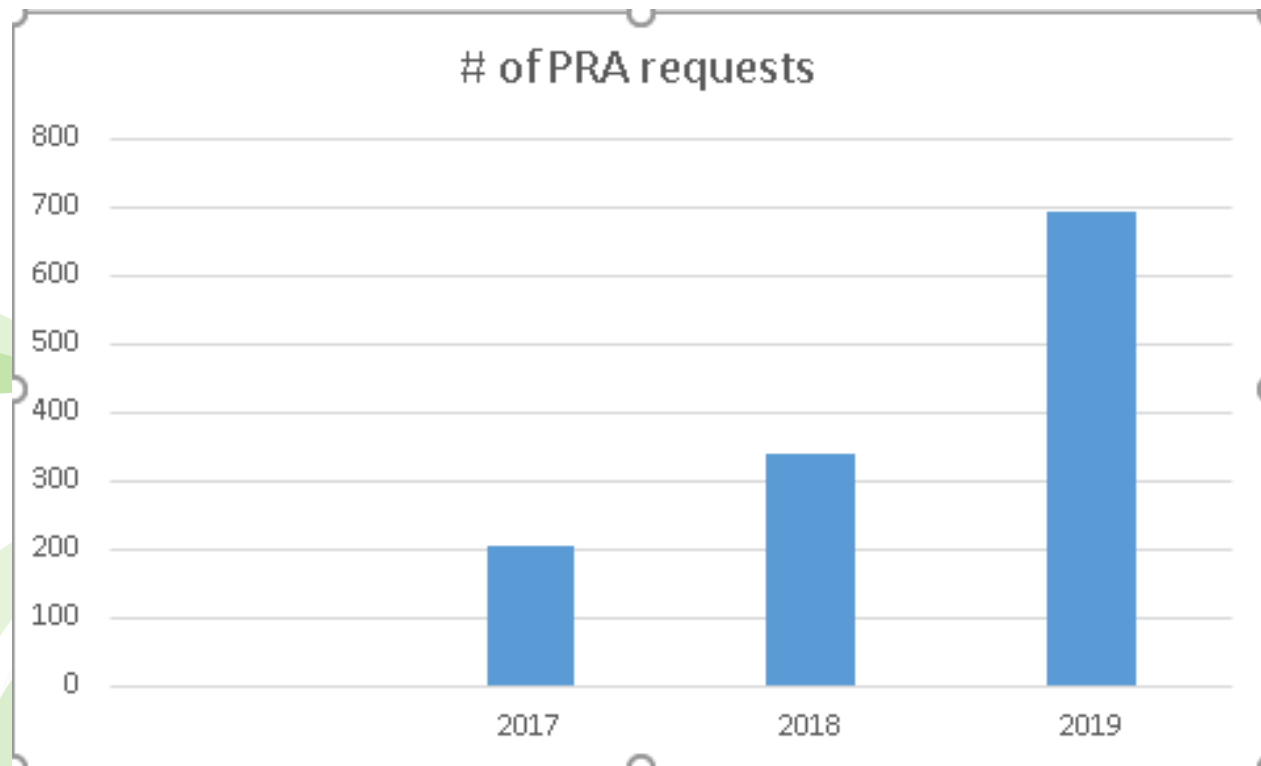
19-553	<input checked="" type="checkbox"/>	Open Vallejo	September 11, 2019 To Whom It May Concern: Pursuant to the California Public Records Act ...	Police Department	Joni Brown
19-552	<input checked="" type="checkbox"/>	Lilah Wolf	I am requesting the CAD print outs for any and all calls responding to 228 Barcelona St, Vallejo....	Police Department	Joni Brown
19-551	<input checked="" type="checkbox"/>	Jason Tanko	I need to request records from the City that cover the purchase and sale of approximately 93 stre...	All Other Departments	Brisa Rojas, Secretary
19-550	<input checked="" type="checkbox"/>	Brandee	Pursuant to the California Public Records Act (California Government Code §§ 620 through 6276.48)...	Code Enforcement	Karen Ang, Secretary
19-549	<input checked="" type="checkbox"/>	Brandee	Pursuant to the California Public Records Act (California Government Code §§ 620 through 6276.48)...	Code Enforcement	Karen Ang, Secretary
19-548	<input checked="" type="checkbox"/>	Brandee	Pursuant to the California Public Records Act (California Government Code §§ 620 through 6276.48)...	Code Enforcement	Karen Ang, Secretary
19-547	<input checked="" type="checkbox"/>	Brandee	Pursuant to the California Public Records Act (California Government Code §§ 620 through 6276.48)...	Code Enforcement	Karen Ang, Secretary
19-546	<input checked="" type="checkbox"/>	Brandee	Pursuant to the California Public Records Act (California Government Code §§ 620 through 6276.48)...	Code Enforcement	Karen Ang, Secretary
19-545	<input checked="" type="checkbox"/>	Brandee	Pursuant to the California Public Records Act (California Government Code §§ 620 through 6276.48)...	Code Enforcement	Karen Ang, Secretary
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19-543	<input checked="" type="checkbox"/>	Brandee	Pursuant to the California Public Records Act (California Government Code §§ 620 through 6276.48)...	Code Enforcement	Karen Ang, Secretary
19-542	<input checked="" type="checkbox"/>	Brandee	Pursuant to the California Public Records Act (California Government Code §§ 620 through 6276.48)...	Code Enforcement	Karen Ang, Secretary
19-541	<input checked="" type="checkbox"/>	Brandee	Pursuant to the California Public Records Act (California Government Code §§ 620 through 6276.48)...	Code Enforcement	Karen Ang, Secretary
19-540	<input checked="" type="checkbox"/>	Brandee	Pursuant to the California Public Records Act (California Government Code §§ 620 through 6276.48)...	Code Enforcement	Karen Ang, Secretary
19-539	<input checked="" type="checkbox"/>	Brandee	Pursuant to the California Public Records Act (California Government Code §§ 620 through 6276.48)...	Code Enforcement	Karen Ang, Secretary
19-538	<input checked="" type="checkbox"/>	Brandee	Pursuant to the California Public Records Act (California Government Code §§ 620 through 6276.48)...	Code Enforcement	Karen Ang, Secretary
19-537	<input checked="" type="checkbox"/>	Brandee	Pursuant to the California Public Records Act (California Government Code §§ 620 through 6276.48)...	Code Enforcement	Karen Ang, Secretary

Impacts on Staff Time & City Resources

- In the City Clerk's Office, a temporary employee has been dedicated to coordinate responses to PRAs from two sources who are frequent requestors (Open Vallejo and Dan Rubins)
 - This one employee has spent 191 hours since May 28, 2019, or an average of 16 hours per week, solely dedicated to a subset of the City's total PRA requests
 - This is in addition to the legal services provided by BB&K on requests from these same two requestors
 - Does not include time spent on PRAs by City Clerk and her regular staff



PRA Volume



Why the increased volume in PRA requests?

New legislation

- AB1819- requester has a right to use the requester's equipment to photograph or otherwise copy public records.
- SB 1421- the Right to Know Act mandates disclosure of police investigatory records if they are concerning:
 - Discharge of a firearm at a person/Use of Force Resulting in Great Bodily Injury
 - Sexual assault
 - Dishonesty related to investigations
- AB 748 provides more public access to body camera footage for critical incidents
- SB 244 prohibits disclosure of Drivers' Personal Information.
- Technical advances and evolution regarding what constitutes a record:
 - Metadata
 - Agency Developed Software
 - Computer Mapping (GIS) Systems



Recent Court decisions

- *City of San Jose v. Superior Court*, 2 Cal. 5th 608

City's Duty to Respond

- Right to inspect by any person
- Right to copy by any person
- Assisting the Requestor
- Locating the Records
 - Reasonable effort to search and locate requested records, including by asking probing questions of city staff and consultants.
 - Relating “to the conduct of the public’s business” and
 - Is “prepared, owned, used or retained by a public entity”



City of San Jose v. Superior Court



- Facts: Request for disclosure of 32 categories of records from city staff and elected officials in connection with redevelopment efforts in downtown San Jose, including emails and text messages sent or received on private electronic devices. City disclosed communications using City Phones but did not disclose communications using individual's personal device or personal accounts.
- Held: A city employee's writings about public business are not excluded from disclosure simply because they have been sent, received or stored in a personal device or account.

Labor & Workforce Development Agency v. Superior Court

- Whether disclosure of documents and communications relating to the decision to enact a new bill was limited due to the deliberative process privilege.
- Court of appeal concluded that the disclosure of pre-decisional communications would discourage candid decision-making, for fear of rejected thoughts and ideas “becoming subjects of public discussion.”
- Court held documents and communications even if purely factual “are exempt from public scrutiny if it is ‘actually related to the process by which policies are formulated’ or inextricably intertwined with policy-making process.”
- **Decision-making is the primary function of the legislature; disclosure of pre-decisional communications would undermine its ability to perform this function.

What is the City's responsibility?

- **Respond** to PRA requests
- An agency may not delay or obstruct the inspection or copying of public records.
- Assist the Requestor who has trouble focusing the request.
- Locating Records
 - Conducting a reasonable search
 - Communicate the scope of the information requested to the custodians of its records/ employees/ officers in question.
 - Agency may then reasonably rely on these people to search their own files so long as appropriately trained
 - Trained on how to distinguish between personal records and public records and applicable exemptions

Updated policies, education

- Updated Administrative Rule 1.11
 - New Public Records Management Policy regarding proper management.
 - No public record less than two years old shall be destroyed
 - Includes Staff and Elected Official Responsibilities (from your Policy)
- Updated Administrative Rule 4.6
 - Access to Public Records: Procedures for Fulfilling California Public Records Act Requests
 - To comply with the PRA
 - To explain the use of Next Request
 - To educate records creators and keepers as to their roles.

What's a reasonable effort?

What about my private email and social media?

Community Youth Athletic Center v. City of National City (2013) 220 Cal.App.4th at pp 1417-1418

“not sufficiently proactive or diligent in making a reasonable effort”

Cal. First Amendment Coalition v. Superior Court (1998) 67 Cal App.4th 159 at 166
“Reasonable effort”

To ensure compliance with the PRA and in anticipation of court scrutiny of agency diligence in locating responsive records, agencies may want to consider adopting policies similar to those required by state and federal E-discovery statutes to prevent records destruction while a request is pending.



Policy considerations

- Restricting use of private devices
- Accommodating privacy concerns
- Gaining access to private devices and accounts
- Complying with the duty to search
- Reviewing and deciding what is to be disclosed

City Council Proposed Policy

- Existing policy was adopted January 13, 2015.
- Details Council responsibilities, including
 - Reviewing and adhering to the Policy and AR 1.11 and 4.6
 - Maintain the security of records
 - Promptly respond to requests made by the Records Coordinator
 - Undertake reasonable effort to search for and disclose all public records that you can locate with reasonable effort.
 - Certify the search
 - Surrender the records
 - Notify the Clerk, City Manager or City Attorney if any request is received by you.

City Council Proposed Policy, Continued

- Management of E-Mail Communications and Electronic Retention
- Limited use of personal devices and personal accounts/ retention schedule
- Identify public records and archive them
 - Print them out and give them to PRA coordinator OR
 - Save public records in a permanent electronic folder in a city drive
- Be aware of automatic purge cycles – 2years

What if there is no response to the request?

- Employees/officials who do not reply to the request? Is it a refusal?
- The agency can report to the requester that a request to search, locate and disclose has been made and no response was received.

Legal Ramifications

- Local Government Records Program pursuant to Cal. Gov. Code 12236
- Secretary of State (2006) Local Government Records Management Guidelines
- Records destruction: GC 34090 requires approval of council and consent of city attorney to destroy records and may only destroy records which are more than 2 years old.
- GC 6200 makes it a felony offense to destroy a “public record”

Switching now to the next topic...

- Decorum
 - Commission update,
 - VMC chapter 2.02 vs. Rosenberg's Rules
 - Various Motions

Any Questions?